



# ARIZONA

## REAL ESTATE BULLETIN

Arizona Department of Real Estate • Vol XXII, No. 2

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1997

*On-line Edition*

## John Bechtold takes reins of Education/Licensing Division



*John Bechtold*

John Bechtold has been named Director of the Department's Education and Licensing Division, replacing Jonathan Wallick.

Mr. Bechtold served as Assistant Director for Education since August 1995.

John is a licensed real estate broker (California, 1989-1993, Arizona, 1994-1995) who worked for Troon Real Estate Corporation in Scottsdale as a broker before joining the Department in December 1995 as Assistant Director-Education, under the late Don Vance.

He received a bachelor's degree in political science from the University of Notre Dame, studied law at the University of San Francisco and attended post-graduate studies at the University of Arizona and Stanford University graduate schools.

## Revised forms available

The following forms have been revised and are available from the Department and may be downloaded from our web site ([www.adre.org](http://www.adre.org)) or from our Fax Response Service.

- LI-200 Broker Change Form
- LI-202 Salesperson/AB Change Form
- LI-203 Salesperson/AB Renewal Form
- LI-204 Designated Broker Renewal
- LI-211 Temporary Cemetery Salesperson's License Employing Broker Affidavit
- LI-220 Membership Camping Salesperson's Certificate of Convenience Employing Broker Affidavit
- LI-235 Licensee's Confidential Information Registration (new)

Please destroy old versions of the forms

## NAR courses OK'd for credit

The following courses, to be presented at the National Association of Realtors® convention November 15—17 in New Orleans, are each approved for three hours Arizona continuing education credit:

- "Issues for Foreign Buyers of U.S. Real Estate" (General)
- "Consumer Red Flags: What's Important to Buyers" (Environmental)
- "Right or Wrong? It's a Matter of Choice" (General)
- "Put Your Trust in Antitrust Awareness" (Real Estate Law)
- Understanding Brokerage Relationships" (Agency Law)
- Advanced Buyer Agency Skills" (Agency Law)

## Commission rebates to

## CostCo are legal

CostCo, the discount membership club, has disclosed that it will offer members who buy and sell real estate through its "Executive Membership Program" a cash rebate, paid from real estate commissions, at close of escrow. The Department has received numerous inquiries as to the legality of this nationwide plan.

AmeriNet Financial Systems, Inc., the real estate arm of the club, will refer prospective buyers and sellers to a local real estate broker who will serve as the buyer's or seller's broker and pay a portion of the commission on the transaction to AmeriNet. A portion of this commission is then rebated to the buyer or seller.

At first, there appeared to be a serious problem here. We could not determine that AmeriNet was licensed as a real estate broker. So, it appeared that any Arizona broker who paid a portion of a commission to the company was in violation of A.R.S. § 32-2163 which states, "It is unlawful for any licensed broker in this state to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter if the person is not also a licensed broker in this state, or a salesperson licensed under broker employing or compensating him, except that a licensed broker in this state may pay compensation to and receive compensation from a broker lawfully operating in another state."

As it turned out, AmeriNet is licensed as a real estate broker in California, and rebates to AmeriNet by Arizona brokers are legal.

## Attorney General's opinions affect real estate licensees

Two formal opinions handed down by the Arizona Attorney General should be of interest to Arizona real estate licensees. The following is the text of those opinions:

### Federal Notarial Acts (197-011):

Secretary of State Jane Hull asked whether notarial acts are valid in Arizona when performed by individuals authorized by federal law for members of the armed forces and people eligible to receive legal assistance. We conclude that notarial acts in Arizona under the authority of federal law are valid even though state law does not expressly recognize federal notaries.

The Legislature has defined a notary public as a person commissioned to perform notarial acts pursuant to A.R.S. §§ 41-312 to 41-323 and the Secretary of State appoints notaries public. Many states specifically recognize federally authorized notarial acts performed within their boundaries. Arizona recognizes notarial acts by U.S. military if they're performed outside the state. But no Arizona statute expressly recognizes notarial acts performed under federal authority inside Arizona's boundaries.

In 1984, Congress conferred the general powers of a notary public on specific military and civilian personnel to serve members of the armed forces and others eligible for legal assistance. Because congress has the power to pass laws governing the military and protect the unique federal interests in military matters, Arizona must recognize the authority legitimately conferred by Congress on federal notaries public." (Issued August 15, 1997)

### Homeowner Association Meetings (197-012)

Rep. Jerry Overton asked whether a homeowners association board of a planned community can meet informal-

ly to discuss, but not vote on or approve, board matters without providing notice to association members and giving them the opportunity to attend. We conclude that the legislative directive in A.R.S. § 33-1804 prohibits a quorum of the board from meeting to discuss board business unless it provides notice to the association's members and an opportunity for them to attend the meetings.

In 1994, the Legislature enacted A.R.S. §§ 33-1801 through 33-1807 to govern the meetings held by an association or board of a planned community. According to A.R.S. § 33-1804, all meetings of an association and its board must be open to all association members, and all members must be permitted to attend and listen to the deliberations and proceedings, with certain limited exceptions—including personnel matters. The statute requires association members to be given at least 48 hours notice of a board meeting—by newsletter, conspicuous posting or other reasonable means.

Confusion has arisen over the applicability of the Open Meeting Law, A.R.S. §§ 38-431 to 38-431.09, to homeowners associations. The law applies only to public bodies and homeowner association boards are not public bodies. A.R.S. § 33-1801, however, is a specialized open-meeting law and the intent behind it parallels the intent behind the Open Meeting Law, which is to open the conduct of government business to the public's scrutiny and to prohibit decision making in secret. Informal meetings of a quorum—even where no formal vote is taken—may allow crystallization of decisions to a point just short of ceremonial acceptance. Thus, interpreting A.R.S. § 33-1804 to allow a board to meet informally without providing notice to association members subverts the law. (Issued August 18, 1997)

loan office is an employee of a duly licensed mortgage broker."

The article should have stated, "...a loan officer may not receive compensation for rendering services as a real estate broker or real estate salesperson unless:

1. The loan officer is licensed as an Arizona real estate broker or real estate

## Department seeks business services officer

The Department is seeking a Business Service Officer. The person will direct and manage various programs for the Department that are substantial in scope and complexity and have significant monetary and public impact.

The position, which is not covered by the Arizona State Services Merit System Rules, pays between \$33,265 and \$54,144, depending on experience.

The Business Services Officer serves as the Department's chief accounting, financial, procurement, fixed assets and human resources officer, and its risk manager.

Other duties include procurement, inventory and annual preparation of the Department's Comprehensive Annual Financial Report.

A candidate should have extensive management experience and knowledge of laws and rules relating to the areas of responsibility. Experience working with main-frame accounting programs and human resources software is helpful.

Interested applicants should submit a detailed and comprehensive work history to Deputy Commissioner, Arizona Department of Real Estate, 2910 N. 44th Street, Phoenix AZ 85018.

## ADRE web site visited by 12,000 in 169 days

The Department's World Wide Web site was visited by 12,000 people between April 10 and September 25, 1997, an average of 387 visitors each day.

Of the 12,000 visitors, 10,216, or 85 percent, moved past the home page to the Table of Contents. The most popu-

*Continued on page 12*

## Correction

An article beginning on page 2 of the August issue of the Arizona Real Estate Bulletin, "The Perils of 'One-Stop' Real Estate Shopping Centers," contained a statement that "...a loan officer may not receive compensation for rendering services as a real estate broker or real estate salesperson unless...the

salesperson; and

2. The loan officer discloses to the person from whom compensation is collected that the loan officer is also being compensated for rendering services as a real estate broker or salesperson..."

The Editor regrets any confusion this error may have caused.



Jerry Holt

## News From The Commissioner

### More About the Buyer-Broker Agreement

I want to dispel a rumor that has somehow begun circulating in the real estate community concerning the buyer's broker agreement. As explained in the August issue of the Bulletin, an amendment to A.R.S. § 32-2151.02(A), enacted by the 1997 Legislature, requires that a buyer's broker agreement must be in writing and contain the same information as a listing agreement.

The question that arose when this legislation was enacted was when must the agreement be put in writing and signed by the buyer and the salesperson or broker. To clarify the requirement of the statute, I have issued the following statement:

"It is our position that the amendment was not intended to prescribe the exact point in a buyer-broker relationship in which the parties must enter into an agreement. Rather, the changes merely mandate that when the parties have an agreement, it must meet certain requirements. We believe that there is a buyer's broker employment agreement within the meaning of the statute when a buyer and broker agree that the broker represents the buyer and the buyer is obligated to the broker. It is at this point in the relationship that the contractual requirements of the statute become applicable."

One real estate salesperson told a Department representative that her broker told her that, "The Commissioner has rescinded the buyer-broker agreement requirement." While the Commissioner has relatively broad powers, they do not include rescinding legislation.

### ADRE Does It Again

While attending the annual conference of the Association of Real Estate License Law Officials (ARELLO) in September, I was pleased to accept the Association's 1997 award for Newsletter Excellence. The Arizona Real Estate Bulletin was judged best among all newsletters submitted by jurisdictions in the U.S., Canada, Australia, New Zealand and Great Britain. We sincerely appreciate the

honor and thank editor Charlie Downs for his great work.

Mike Barnett, who runs the Barnett Technology Group in Scottsdale, and who has made a great contribution in the creation of Realtown ([www.realtown.com](http://www.realtown.com)), "wowed" the ARELLO audience with his vision for "distance learning," as it will undoubtedly affect real estate continuing—and perhaps precicensure—education in the very near future. Continuing education for real estate licensees through the Internet is already available in some states, and computer-aided education may be coming to an approved real estate school near you within the next year or two. It's an exciting prospect. Every student receives exactly the same course of learning, testing is built in, and the Department knows exactly what will be presented so that quality education is ensured.

ARELLO's Task Force on International Relations (of which I was a member) wrapped up its business at the ARELLO meeting. We were able to report that we had identified every country in the world which has or should have real estate regulation. ARELLO has, for some time, been inviting nations other than its present membership base to join the organization. Representatives from several countries have visited the last three ARELLO annual meetings and the United Kingdom, Australia and New Zealand have become members. Poland has submitted an application for membership and will, no doubt, be accepted as soon as their proposed Real Estate Code passes the Legislature in January 1998.

### The Old Homestead Scam is Back

It's alive! A local television journalist called the Department the other day. He had just purchased a new home and received a very official-looking document in the mail offering to file a homestead exemption on his new home for just \$25. As you most likely know, in Arizona, a \$100,000 homestead exemption is automatically recorded on a home, if it is the buyer's primary residence, when the deed is recorded. You would be doing your

buyers a great service by making it clear to them that the homestead is automatic, and anyone who offers to file the homestead exemption for a fee is attempting to defraud them.

### Five-Year Rules Review

Every five years, the Department is required to submit the Commissioner's Rules to a process designed to eliminate unneeded regulation, clarify existing rules when necessary, and to add new rules where required. Our proposed Rules Package will be published early in October. You'll be able to view and download it from our web site, obtain it from our Fax Response Service, or obtain a copy by visiting the Department. I am interested in any suggestions or comments regarding the new package. It is the result of a great deal of work by Deputy Commissioner John King, Administrative Actions Division Director Cindy Wilkinson, Audit/Investigations Division Director Jim Duke and Subdivisions Director Roy Tanney in particular. My thanks to these tireless yoemen.

### How Are Things on the Ninth Floor?

Just fine. Governor Jane Dee Hull's new staff has already demonstrated that they are extremely competent and respond quickly to our concerns.

One of the first things the new administration did was to visit all State agencies to determine exactly what each agency does. The overview of the Department of Real Estate responsibilities, as submitted to the Governor, is on page 12. We think you'll find it interesting.

### Our New Computer System

The new system is nearly complete, and has already made dramatic reductions in the time it takes for the Department to process applications for licenses and subdivision public reports. Best of all is the money we saved by doing a great deal of the work involved in designing and debugging the system within our own ranks. We estimate that we saved \$750,000 in design and development costs, and will save \$40,000 each year because we are able to do much of the updating and maintenance work required for the new system.

Each of our Division Directors had a say in the design of the new system so that it would work for everyone. Major kudos go to Rose Lopez, Jim Duke and Cindy Wilkinson who have worked continuously with our vendor to ensure that the system will serve licensees and the public in the best possible way.





## ARIZONA REAL ESTATE BULLETIN

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address, with your check for \$10, to the  
Department's Phoenix address.  
The Department of Real Estate is an  
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### 1997 Schedule of Broker Audit Clinics

A.R.S. § 32-2136 requires all newly licensed real estate brokers to attend a Broker Audit Clinic presented by the Department within 90 days of issuance of their original broker's license. *Effective July 21, 1997, all designated real estate brokers must also attend a Broker Audit Clinic within 90 days after becoming a designated broker unless the broker has attended an audit clinic during the broker's current licensing period.* All designated brokers shall attend a broker audit clinic once during every four-year period after their initial attendance.

Seating is limited and reservations are required. To make a reservation for a Phoenix clinic, call the Department's Customer Services Division at (602) 468-1414, extension 100. In Tucson, call (520) 628-6940. Those who fail to make reservations will be turned away if seating is not available. Brokers who attend will receive three hours of continuing education credit in the category of Commissioner's Rules.

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 1997. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

PHOENIX  
Industrial Commission Auditorium  
800 W. Washington

**Noon - 3 p.m.**

October 24  
November 21  
December 19

TUCSON  
State Office Building  
400 W. Congress  
Room 158

**8:30 a.m. - 11:30 a.m.**

October 23  
November 20  
December 18

### NOTICE

Effective August 22, 1997, the Department of Real Estate has discontinued charging a \$20 recovery fund fee for corporation, partnership or limited liability companies licensed pursuant to

A.R.S. § 32-2125(A)

The mission of the Arizona  
Department of Real Estate is to  
safeguard and promote the public  
interest through timely and capable  
assistance, fair and balanced  
regulation, and sound and  
effective education.

## ADMINISTRATIVE ACTIONS

### REVOCATIONS

**H-1725**

**William R. Foulet**  
**Prescott**

DATE OF ORDER: May 2, 1997

FINDINGS OF FACT: In an Order summarily suspending Respondent's real estate salesperson's license issued April 19, 1996, the Department alleged the following:

In his application for a real estate salesperson's license in May 1994, Respondent failed to disclose a 1991 arrest (in Carlsbad, Calif.) for Burglary and Possession of Stolen Property, both felonies, and a resulting conviction on August 8, 1991 for Trespass on Land, a misdemeanor.

In November 1994, the California Department of Real Estate revoked Respondent's salesperson's license based on the August 8 conviction.

Respondent admitted to Department representatives that he intentionally concealed the 1991 conviction because he believed that the Arizona Department of Real Estate would have denied his application for licensure.

While employed by Remax—Mountain Properties in Prescott in February 1995, Respondent convinced Carol White to make an offer to purchase property in Prescott. Respondent prepared the purchase contract on White's behalf and acknowledged receipt of \$100 in cash from White as earnest money.

The property was owned jointly by Stephen Horvath and Jan Herrington, Respondent's housemate, co-worker at the real estate firm, and fellow licensee. Despite his knowledge of the fact, Respondent did not disclose in the offer to purchase that Herrington was a licensed real estate broker or his personal or work relationships with Herrington.

The offer to purchase was altered by insertion of the property's legal description and the seller's disclosure that Herrington was a licensed real estate broker after White signed and was given a copy of the offer. An addendum to the contract changed the character of the transaction from a purchase to a lease with an option to purchase.

Remax—Mountain Properties acted as dual agent, represent both the buyer and seller in the transaction, despite also being the seller's employing broker.

At the time of the summary suspension, the Department notified Respondent that an Administrative Hearing would be held in this matter. Respondent requested a hearing. Subsequently, Respondent failed to contact the Department regarding the hearing, and the Department has been unsuccessful in contacting Respondent.

DISPOSITION: Respondent's real estate salesperson's license is revoked.

**H-1871**

**Kevin D. Worsley**  
**Cave Creek**

DATE OF ORDER: June 23, 1997

FINDINGS OF FACT: The Department issued an original real estate broker's license to Worsley

on January 16, 1978. That license expires on October 31, 1997.

On February 15, 1996, Worsley was convicted of Indecent Exposure, a misdemeanor.

The Court suspended imposition of sentence and placed Worsley on three years' supervised probation. He was ordered to pay probation fees; participate, cooperate and successfully complete psychological counseling; abide by all sex offender conditions; have no contact with the victim; participate in the Community Punishment Program; and advise the Department of his conviction.

He disclosed his conviction to the Department on March 13, 1996. Worsley first told the Probation Department and the Department that the incident was inadvertent. However, during the Department's Administrative Hearing in this matter, Worsley admitted that he had intentionally exposed himself to a nine-year-old female.

VIOLATIONS: Worsley's conviction represents a crime of moral turpitude within the meaning of A.R.S. § 32-2153(B). His conduct, and inaccurate statements made by Worsley to the Department and the Probation Office, show he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Worsley's real estate broker's license is revoked.

### SUSPENSIONS

**H-1881**

**Robert E. Goodpasture, Jr.**  
**Scottsdale**

DATE OF ORDER: July 22, 1997

FINDINGS OF FACT: The Department issued an original real estate broker's license to Respondent on June 9, 1988. That license expires on July 31, 1998.

Respondent sold land he owned in Paradise Valley ("the 1991 sale") and deposited sale proceeds into various bank accounts and certificates of deposit. Respondent testified that he did not represent the buyer in the sale of the land, and that his status as a licensed real estate broker was disclosed on the sales contract.

On August 2, 1996, Respondent entered into a plea agreement in U.S. District court, District of Arizona, in which he pleaded guilty to one count of Willfully Subscribing to a Materially False 1991 Federal Income Tax Return in violation of 26 U.S.C. § 7206(1). He admitted that he signed under penalty of perjury, and filed with the IRS, a false 1991 tax return which did not report an \$82,500 capital gain from the 1991 sale. He also admitted that he acted knowingly and willfully, with the specific intent to violate the law, and did not act based on a good faith belief that he had done all the law required.

The Court placed Respondent on three years' probation and ordered him to pay a \$10,000 fine. His term of supervised probation is scheduled to end on October 15, 1999.

Respondent does not deny that he pleaded guilty to subscribing to a false 1991 tax return, but contends that the circumstances

underlying his conduct shows he is not guilty of conduct which constitutes fraud or dishonest dealings. According to Respondent, his conduct in subscribing to the false return was the result of following improper tax advice from a tax preparer, improper handling of a 1099-S form by a title company, and negligent preparation of the tax return by the tax preparer.

He also established that he paid the outstanding 1991 tax liability in June 1993 approximately four months after receiving notification from the IRS that the capital gain on the sale was not properly reported, and approximately three years prior to the indictment. VIOLATIONS: Respondent's conviction represents a felony conviction within the meaning of A.R.S. § 32-2153(B)(2). His conduct in falsely subscribing to a federal tax return constitutes dishonest dealings within the meaning of A.R.S. § 32-2153(B)(5). While he committed a dishonest act, that act represented an aberration which must be viewed in light of the surrounding circumstances. Accordingly, the totality of the evidence did not establish that Respondent was not a person of honesty, truthfulness and good character.

DISPOSITION: Respondent's real estate broker's license is suspended for 180 days effective on the date this order becomes final (Date of Order, above). Respondent to pay a civil penalty in the amount of \$500.

### LICENSE APPLICATIONS DENIED

**H-1886**

**David William Locke**  
**Tucson**

DATE OF ORDER: August 25, 1997

FINDINGS OF FACT: Petitioner filed an original application for a real estate salesperson's license on December 16, 1996 in which he disclosed that he had been convicted of Theft by Conversion and/or Misrepresentation with a value of \$250 or more but less than \$1,000, a class 6 undesignated felony.

The Department denied the application and Petitioner filed an appeal.

On September 20, 1995, Petitioner was indicted in Pima County Superior Court for Fraudulent Scheme and Artifice, a class 2 felony, and Theft by Conversion, a class 3 felony. The indictment alleged that Petitioner stole \$13,389.26 from an employer. Petitioner admitted that he stole the money to support his cocaine addiction.

Petitioner entered into a plea agreement which resulted in the conviction which he disclosed. The Court suspended sentence and placed Petitioner on three-years supervised probation. He was ordered to pay restitution to his former employer, to submit to drug and alcohol testing and treatment as directed, and not to obtain employment where he would be entrusted with employers' funds.

Petitioner failed to appear at a hearing of his appeal which was held June 27, 1997.

VIOLATIONS: Petitioner was convicted of a crime of moral turpitude or like offense in violation of A.R.S. § 32-2153(B)(2). As a result of the conviction, Petitioner has been found guilty

of conduct which constitutes fraud and dishonest dealings in violation of A.R.S. § 32-2153(B)(5). Petitioner's criminal conviction establishes that he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).  
DISPOSITION: Application denied.

## LICENSE RENEWALS DENIED

### H-1880

**Timothy P. Wright**  
**Phoenix**

DATE OF ORDER: July 21, 1997

FINDINGS OF FACT: Petitioner filed an original application for a real estate salesperson's license in March 1994. In his application, he disclosed that he had been indicted in January 1994 by the federal government, but denied that he was involved in any crimes while employed with Western Savings & Loan Association from November 1984 until March 1989. The Department issued Petitioner a salesperson's license.

On April 30, 1996, Petitioner filed an application for license renewal. In April 1997, the Department notified Petitioner that it intended to deny the renewal application. Petitioner submitted a demand for a hearing concerning this matter.

On October 23, 1995, Petitioner entered into a plea agreement and pleaded guilty of three counts of Accessory After the Fact in violation of 18 U.S.C. §§ 3 and 1014 in connection with the January 13, 1994 Indictment filed in U.S. District Court, District of Arizona. On January 22, 1996, Petitioner was convicted to three counts of Accessory After the Fact, and was placed on three years probation. As conditions of probation, Petitioner must cooperate with the Resolution Trust Corporation in any pending civil matters regarding Western Savings and cannot be employed by, nor act as agent for, any financial institution. The Court dismissed the Indictment filed against Petitioner.

Although the conduct underlying Petitioner's conviction occurred nine years ago, he was convicted less than six months ago and is currently on probation. He did not provide any corroborating evidence or testimony to demonstrate his rehabilitation or to establish beyond a preponderance of the evidence that he is a person of honesty, truthfulness or good character.

DISPOSITION: Petitioner's application for renewal of his real estate salesperson's license is denied.

## CONSENT ORDERS

### H-1873

**Garvin Wesley King, aka G. Wesley King and Jeannine King**  
**Queen Creek**

DATE OF ORDER: April 23, 1997

FINDINGS OF FACT: Neither Garvin Wesley King (Wes King) nor Jeannine King holds an Arizona real estate license, nor has a subdivision public report been issued to the Kings for their property, approximately 50 acres, located in Maricopa County.

On June 23, 1976, the Kings purchased the 50-acre parcel. Between June 1976 and November 1996, the Kings orchestrated the split of the 50 acres into at least seven parcels, and

offered for sale or sold more than six lots.

The Kings worked in concert with William Watkins to divide and sell an additional three parcels, finding buyers for the property prior to selling the property to Watkins. King conducted all the property divisions and has previously subdivided lands and is aware of the subdivision laws. Although he knew he could split a parcel into no more than five parcels, he believed he could also split a parcel deeded back to him by a buyer into five parcels.

VIOLATIONS: The Kings' actions resulted in the creation of a subdivision, pursuant to A.R.S. § 32-2101(50). The Kings, on their own behalf and on behalf of others, sold or offered for sale lots in a subdivision without first applying for and obtaining a public report in violation of A.R.S. § 32-2181(A) and (D).

The Kings' failure to advise purchasers that a public report was required prior to the offer or sale of the lots constitutes a violation of A.A.C. R4-28-803.

DISPOSITION: The Kings shall pay a civil penalty in the amount of \$5,000. They shall cooperate with Maricopa County to ensure compliance with subdivision requirements.

The Kings shall notify each purchaser that such purchaser has a right of rescission pursuant to A.R.S. § 32-2183.03.

### H-1887

**In the matter of Thomas Crandall, Model Home Center, Inc., dba Model Home Center, and in the matter of the real estate salesperson's license of T.J. Buck**  
**Phoenix**

DATE OF ORDER: May 19, 1997

FINDINGS OF FACT: Buck was issued an original real estate salesperson's license in December 1994. The license expired December 31, 1996. Buck was employed as a salesperson by Model Home Center, a corporation licensed as a real estate broker.

Buck submitted an untimely renewal application to the Department on April 16, 1997. Between January 1, 1997 and April 8, 1997, Buck provided real estate services for which a license is required while his license was expired.

Thomas Crandall was appointed designated broker for Model Home Center on November 13, 1996. As designated broker for Model Home Center, he was responsible to ensure that salespersons and associate brokers employed by the Model Home Center were currently and actively licensed to the corporation.

At the time he submitted his renewal application, Buck disclosed he had received \$2,255 in commissions and anticipated receipt of an additional \$5,616 on transactions which had not closed escrow.

Crandall stated that, as newly-appointed designated broker, he inadvertently failed to note that Buck's license had expired. He further stated that he has since implemented office procedures which will allow him and others in the office to monitor and detect upcoming license expiration dates to avoid a recurrence of this situation.

VIOLATIONS: Buck conducted activities for which a current real estate license is required, in violation of A.R.S. § 32-2122. He received

compensation while his license was expired, in violation of A.R.S. §§ 32-2153(A)(10) and 2155(A).

Crandall and Model Home Center employed and paid compensation to a licensee whose license had expired in violation of A.R.S. §§ 32-2153(A)(6), 32-2153(A)(10) and 32-2155(A) and (B).

Buck, Crandall and Model Home Center disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3).

DISPOSITION: Buck and Crandall shall each pay the to Department a civil penalty in the amount of \$500.

Buck shall take 12 hours and Crandall shall take six hours of approved real estate continuing education in specified topics in addition to continuing education required for license renewal.

Buck shall offer to refund or not accept commissions earned while his license was expired.

### H-1885

**Ray L. Johnson, aka Bud Johnson**  
**Prescott**

DATE OF ORDER: May 20, 1997

FINDINGS OF FACT: On August 28, 1996, Johnson was issued an original real estate salesperson's license. In his application he disclosed that he had been convicted of bank robbery in U.S. District Court for the Western District of Washington, a felony, and was sentenced to 12 years in prison.

Johnson failed to disclose that he had been convicted of Transporting False Securities in 1956 (for which he spent 10 years in prison) and had served six months in prison for an assault conviction.

He explained that the omissions were an oversight, believing that the assault conviction was "part and parcel" of the same punishment for Transporting False Securities. After being given probation and a suspended sentence for the assault conviction, he violated terms of his probation by leaving the state and passing a bad check.

VIOLATIONS: Johnson has been convicted of two felonies within the meaning of A.R.S. § 32-2153(B)(2). He procured or attempted to procure a license by fraud, misrepresentation or deceit by filing an original real estate license application which was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).

His failure to disclose the full extent of his criminal history has resulted in his failure to demonstrate he is a person of honesty, truthfulness and good character, within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Johnson's real estate license is revoked.

### H-1878

**Consent order of John Ninde in the matter of the real estate broker's license of John Ninde, and in the matter of the real estate salesperson's license of Carolyn K. Christy, aka K.C. Christy**  
**Tucson**

DATE OF ORDER: May 29, 1997

FINDINGS OF FACT: Ninde was granted a real

estate broker's license in February 1988. At all times material to this matter, Ninde was employed by Realty World, Mike Dennis Realty, as an associate broker.

On October 16, 1995, R.L. Commercial, dba Roy H. Long Realty Company, listed for sale a 5-acre parcel of property in Tucson. The property was owned by Robert and Wilma Babikan of Wisconsin, and was offered for \$16,500. The listing stated electric service to the property was at the "road," and the sellers described the availability of "Power" by circling the word "none" from a list of choices and adding the words "at property line." This information was included in documents provided to the Department by both Ninde and Christy.

On November 30, 1995, Ninde and Christy, representing buyers Lawrence and Sandi Menden, presented an offer to purchase the property for \$14,000. Ninde did not first clarify or verify the listing information about the availability of residential electrical power. The Mendens' offer was accepted by the sellers.

On December 1, 1995, the Mendens signed escrow instructions wherein they waived the right to further inspect the property and escrow closed on December 13. Prior to close of escrow, the Mendens represented to Ninde and Christy their intent to move a double-wide manufactured home onto the property and to live there.

After close of escrow, the Mendens discovered that power lines adjacent to the property are high-voltage transmission lines which cannot be used to obtain residential power.

The cost of bringing residential electric service to the property is estimated to be between \$33,000 and \$42,920.

In explanation and mitigation, Ninde attests that the Mendens indicated that they planned to invest in solar power and were unconcerned about further checking into electrical service, and that they offered to purchase the property from the Mendens at the price paid, or to help them sell it at no charge.

**VIOLATIONS:** As the buyers' agent, Ninde owed a fiduciary duty to the Mendens. Ninde violated his fiduciary duty by failing to determine and disclose that electrical power to the property was not readily available, a fact material to the transaction, as required by A.A.C. R4-28-1101(B).

Ninde failed to deal fairly with all parties to a transaction as required by A.A.C. R4-28-1101(A). His actions constitute violations of provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, within the meaning of A.R.S. § 32-2153(A)(3). **DISPOSITION:** Ninde shall pay a civil penalty in the amount of \$1,000 and shall take six hours of continuing education in specified topics in addition to continuing education required for license renewal.

#### H-1892

**James Brian Bowman and Frontier West Properties, Ltd.**

Tucson

DATE OF ORDER: May 31, 1997

**FINDINGS OF FACT:** Bowman was issued an original real estate broker's license in November 1996. At all times material to this matter, he

was the designated broker for Frontier West Properties, Ltd., a corporation licensed as a real estate broker.

On December 14, 1996, Bowman timely submitted an application for renewal of Frontier's real estate broker's license. On January 13, 1997, the Department returned the application as incomplete because Frontier had not complied with the annual report requirements of the Arizona Corporation Commission. The Department advised Bowman he had until January 31, 1997, to return the renewal application with proof of compliance with the annual report requirements for the renewal to be timely filed.

Bowman and Frontier made no efforts to comply with the Department's request.

Bowman states, and provided evidence to corroborate, that a Frontier employee received the returned, incomplete renewal application and accompanying correspondence and had inadvertently filed both without first showing the documents to Bowman.

Between February 1, 1997 and approximately April 23, 1997, Bowman and Frontier provided real estate services with being properly licensed.

On April 23, 1997, Bowman resigned as designated broker of Frontier. He disclosed he had received \$3,057 in commissions and anticipated receipt of an additional \$14,982 on transactions which had not closed escrow.

**VIOLATIONS:** Bowman and Frontier conducted activities for which a current real estate license was required, in violation of A.R.S. § 32-2130(B). Bowman and Frontier received compensation while Frontier's license was expired, in violation of A.R.S. § 32-2153(A)(10). Bowman and Frontier demonstrated negligence in performing any act for which a license is required by continuing to work after the license expired, in violation of A.R.S. § 32-2153(A)(22). Bowman and Frontier disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3).

**DISPOSITION:** Bowman and Frontier shall pay a civil penalty in the amount of \$500. Bowman shall take six hours of continuing education in specified topics in addition to continuing education required for license renewal.

Bowman and Frontier shall offer to refund or not accept commissions which they earned after the corporate license expired.

#### H-1845

**Frank R. Freeland, aka Francis Roland Freeland**

Tucson

DATE OF ORDER: June 3, 1997

**FINDINGS OF FACT:**

Petitioner was previously licensed as a real estate salesperson in Arizona. That license expired without renewal on November 30, 1984.

On July 28, 1996, Petitioner submitted an original application for a real estate salesperson's license in which he disclosed that he had previously entered into two consent orders with the Department and an Assurance of Discontinuance filed by the Arizona Attorney General's Office.

In an October 1988 Consent Order, Petitioner admitted violating provisions of the

Arizona Subdivision Laws in having sold or leased subdivided lands without prior approval of the Commissioner and failure to notify the Commissioner of the change in ownership of parcels and the divisions of such parcels into smaller parcels as required prior to sales.

On February 15, 1990, a judge in Cochise County Superior Court approved an Assurance of Discontinuance filed by the Arizona Attorney General's Office in which Petitioner agreed not to advertise, solicit, offer or sell land within the state which does not have legal and physical access from a public thoroughfare.

On December 20, 1990, Petitioner entered into a Consent Order with the Department in which he admitted to violating provisions of the Arizona subdivision statutes in having sold or leased subdivided lands without prior approval of the Commissioner and violating A.R.S. §§ 32-2181(A) and 32-2184.

On October 30, 1996, the Department denied Petitioner's application for a real estate salesperson's license pursuant to A.R.S. § 32-2153/ On November 1, 1996, Petitioner requested an administrative hearing based upon the Department's denial. In mitigation, Petitioner attests that:

a. While he was previously licensed by the Department, no disciplinary action was taken against that license.

b/ He otherwise is and has been a law-abiding citizen.

**VIOLATIONS:** Petitioner previously violated state subdivision laws and rules, within the meaning of A.R.S. § 32-2153(A)(25). He violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3). His conduct and actions raise issues concerning whether he is a person of honesty, truthfulness and good character, within the meaning of A.R.S. § 32-2153(B)(7).

**DISPOSITION:** The Department shall issue Petitioner a provisional real estate salesperson's license. During all periods of active licensure, up to three years' cumulative active licensure, Petitioner shall comply with the following terms and conditions:

1. Each designated broker who wishes to employ Petitioner shall file with the Department a signed statement certifying that such broker has received a copy of this Consent Order and agrees to act as Freeland's practice monitor. The practice monitor shall submit quarterly written reports to the Department attesting to Petitioner's workload as well as the quality of services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct which violates real estate statutes or rules, or any precepts or standards as prescribed by the National Association of Realtors® Code of Ethics.

2. Pursuant to A.R.S. § 32-2193.02, Petitioner shall post a surety bond in favor of the State of Arizona in the amount of \$10,000.

3. Petitioner shall not apply for nor be issued a real estate broker's license until or unless he successfully completes the three-year provisional license period.

#### H-1879

**Jack L. Young, Dora F. Young and Jack Allen**

**Young, aka Jack A. Young Littlefield**

DATE OF ORDER: June 11, 1997

FINDINGS OF FACT: None of the Respondents holds an Arizona real estate license. Between March 11, 1988 and October 4, 1995, Jack and Dora Young acquired 20 lots, and Jack Young and Jack A. Young acquired 44 lots in Virgin Acres, Tract 1, in Mohave County.

Jack and Dora Young have sold at least 17 of the lots but were not issued a public report for the property.

Jack Young attended a question and answer session with local residents presented by the Department concerning subdivision law held in Littlefield in February 1996. At Jack A. Young's request, a department subdivision representative also met with him, Jack Young and a Mohave County employee on February 15, 1996, in the Mohave County offices. Public report requirements were reviewed extensively at that time with Jack Young and Jack A. Young.

Respondents provided incomplete information in the initial application for a Public Report.

Jack Young and Dora Young continued their attempts to offer lots in the subdivision after having been advised of the need to first obtain a Public Report.

Jack and Dora Young were issued a public report on March 3, 1997, for 38 lots in the subdivision.

**VIOLATIONS:** Respondents have sold and offered for sale lots in a subdivision without giving notice to the Commissioner or obtaining a public report in accordance with A.R.S. § 32-2181, et seq. Respondent's failure to advise purchasers that a public report was required prior to the offer or sale of subdivided lots, and the sale or offer for sale of the lots without a public report, renders the sales rescindable by the purchasers pursuant to A.R.S. § 32-2183(E). **DISPOSITION:** Respondents shall not sell, offer for sale or lease or convey lots in Virgin Acres Tract No. 1 without a subdivision public report. Jack Young and Dora Young shall immediately, upon entry of this Consent Order, offer rescission to all purchasers who purchased lots prior to issuance of a public report.

Jack Young and Dora Young are assessed a civil penalty in the amount of \$15,000.

Jack A. Young shall demonstrate to the Department that he meets the statutory qualifications for an Arizona real estate license, pursuant to A.R.S. § 32-2124, and shall complete six hours of real estate continuing education courses in specified topics within 120 days of entry of this Order.

Jack Young shall not be involved in subdivision marketing and sales of Virgin Acres, Tract No. 1, in any capacity except as owner. If, as owner, he wishes to be so involved, Young must first take six hours of continuing education courses in specified topics.

**H-1893**

**Sandra Wilken Luxury Properties, L.L.C., dba Sandra Wilken Luxury Properties, and Yvonne Chrysokos Phoenix**

DATE OF ORDER: June 13, 1997

FINDINGS OF FACT: Sandra Wilken Luxury

Properties (SWLP) was issued an original limited liability company real estate broker's license in March 1995. The license expired March 31, 1997.

Yvonne Chrysokos was issued an original real estate broker's license in May 1995. That license will expire May 31, 1999. On July 2, 1996, Chrysokos became the designated broker for SWLP.

From April 1, 1997, when SWLP's license expired, to May 29, 1997, SWLP, by and through its designated broker and licensed employees, provided real estate services for which a broker's license is required pursuant to A.R.S. § 32-2125, without being licensed. These services resulted in the payment to SWLP and Chrysokos of compensation for which they were ineligible.

On May 29, 1997, upon discovering that SWLP's license had expired, Chrysokos and SWLP immediately ceased activities requiring licensure and directed their licensed employees to cease all such activities pending resolution of this matter.

SWLP and Chrysokos attest that the failure to renew SWLP's license was inadvertent, resulting from a misunderstanding of how an entity license is renewed. They attest that when SWLP relocated its offices in November 1996, they believed that the license was then renewed and would not expire until November of 1998.

During the unlicensed period, SWLP received \$15,243 in commissions, and Chrysokos received \$7,000 in commissions. In addition, a transaction in which rental/licensing fees were earned was pending.

**VIOLATIONS:** SWLP conducted activities for which a current real estate license is required when it was not licensed to do so, in violation of A.R.S. § 32-2122(B). SWLP acted as a broker after its license expired, in violation of A.R.S. § 32-2130(B). SWLP paid and received compensation in violation of the provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(10).

Chrysokos' failure to timely renew SWLP's broker's license and continuing to operate SWLP when it was not properly licensed demonstrates negligence within the meaning of A.R.S. § 32-2153(A)(22). SWLP employed and paid Chrysokos and other licensed employees, and Chrysokos and other licensed employees received compensation from SWLP, in violation of A.R.S. § 32-2155(A).

Chrysokos failed to exercise reasonable supervision and control of the activities for which a real estate license is required of a limited liability company on behalf of which Chrysokos acted as designated broker, in violation of A.R.S. § 32-2153(A)(21).

**DISPOSITION:** SWLP and Chrysokos shall pay a civil penalty in the amount of \$500.

Chrysokos shall attend six hours of continuing education in specified topics in addition to continuing education required for license renewal.

SWLP and Chrysokos shall offer to refund or not accept commissions which they earned during the unlicensed period.

SWLP shall re-make or have ratified by the property owner each listing agreement and property management agreement executed dur-

ing the unlicensed period.

SWLP's broker's license shall be renewed immediately upon entry of this Consent Order and submission of applicable forms and fees.

**H-1875**

**Consent order of Carol Ann Williams in the matter of Skyline Ranch/Williams Acres, aka Lots 4 and 5 of Las Lomas Subdivision and adjoining parcels 1, 2, 3, 4 and 5 Tempe**

DATE OF ORDER: May 31, 1997

**FINDINGS OF FACT:** Williams acquired approximately 11 acres of land near Laveen. She also acquired lots 4 and 5 of a previously platted subdivision which adjoin the 11 acres. Because the 11-acre parcel and lots 4 and 5 are contiguous, when acquired by Williams they became one parcel pursuant to A.A.C. R4-28-120(A). She designated the land "Skyline Ranch."

Williams agreed to sell 2-1/2 acres of Skyline Ranch to Larry and Linda Tromanhauser. Escrow closed on October 30, 1994.

On January 28, 1994, Williams sold a one-acre parcel of Skyline Ranch to Stan and Brenda Sharp. Escrow closed October 30, 1994.

Between July 21, 1993 and July 7, 1994, Williams had the property surveyed. Plot plans illustrated a total of 10 lots.

On September 1, 1995, Stewart Title and Trust filed an Application for Public Report for Skyline Ranch on behalf of Williams following advice of legal counsel that the total land division could be construed as a seven-lot subdivision. The Sharps and Tromanhausers were advised that closing would be delayed pending issuance of a public report.

In mitigation and explanation, Williams attests that:

- Her intent was to sell the two lots in Las Lomas subdivision and to split the 11-acre parcel into five lots.
- Because she had discussed her plan of development with Maricopa County and had not been advised of any issues involving subdivision requirements, she was unaware that the two lots in the adjoining Las Lomas subdivision would accrue to the total number of parcels being created.

**VIOLATIONS:** Williams' actions resulted in the creation of a subdivision, pursuant to A.R.S. § 32-2101(50). She sold or offered for sale lots in a subdivision without first applying for and obtaining a public report, or an exemption to the public report requirements, in violation of A.R.S. § 32-2181(A) and (D). Her failure to advise purchasers that a public report was required prior to the offer or sale of subdivided lots, and the sale or offer for sale of the lots without a public report, renders the sales rescindable by the purchasers pursuant to A.R.S. § 32-2183(E). **DISPOSITION:**

- Williams shall withdraw her application for a public report.
- She shall notify the persons to whom she has sold any of the lots that they may rescind the purchase pursuant to A.R.S. § 32-2183.03.
- Skyline Ranch may be divided by Williams only shown in a plat map which is a part of this consent order. The total number of parcels created shall not exceed five.



4. Williams agrees that she will not divide the property except as shown in the map, nor act in concert with others to divide the property in violation of the subdivision laws.

5. Williams shall pay a civil penalty in the amount of \$1,000.

#### H-1883

**Steven Dennis Yost**

**Phoenix**

DATE OF ORDER: July 9, 1997

FINDINGS OF FACT: In his application for an original salesperson's license, Yost failed to disclose a 1992 conviction in Scottsdale City Court for Criminal Damage and Trespass (misdemeanors), and a 1993 case in Maricopa County Superior Court in which he pleaded guilty to Aggravated Assault (a felony). The Court withheld the finding of guilt and ordered Respondent to serve two months in jail and placed him on three years' supervised probation.

Petitioner was also arrested by Scottsdale police in April 1992 on charges of Criminal Damage and Criminal Trespass, and Interference with Judicial Procedure, but the charges were dismissed as a result of Petitioner's participation in a diversion program.

Petitioner's probation in the 1993 case was terminated in May 1996.

On September 25, 1996, Petitioner submitted a timely application for license renewal in which he disclosed the 1993 charges for Criminal Trespass and Assault. The Department notified Petitioner of its intent to deny his application, and Petitioner submitted an appeal to that denial.

VIOLATIONS: Petitioner failed to notify the Commissioner of his misdemeanor convictions within 10 days as required by A.A.C. R4-28-301(C). As a result of his actions, Petitioner has disregarded and/or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3). His conduct and actions constitute the procurement or attempted procurement of a license by filing an original or renewal application which was false or misleading in violation of A.R.S. § 32-2153(B)(1). His conduct has not shown that he is a person of honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner's real estate salesperson's license is suspended for 60 days beginning with the effective date of this Order. He shall take 12 hours of continuing education in topics specified by the Department in addition to continuing education required for license renewal. He shall pay a civil penalty in the amount of \$3,000.

If, at any time, Petitioner is convicted of an offense involving physical violence, the conviction will be grounds for immediate suspension and revocation of his real estate salesperson's license.

#### H-1674

**Realty Power Inc., Enrique Gonzalez and Joseph M. Solorio**

**Tucson**

DATE OF ORDER: July 10, 1997

FINDINGS OF FACT: Realty Power was originally licensed as a corporate real estate broker in

December 1987. Gonzalez was originally licensed as a real estate broker in May 1988. He is the designated broker for Realty Power. Solorio was originally licensed as a real estate broker in December 1987.

In November 1992, Glenn and Kristina Hancock gave Solorio the exclusive right to sell their residence on Doria Drive in Tucson. The exclusive right to sell agreement expired on March 15, 1993.

In January 1993, the Hancocks, through Realty Power, with Solorio as the listing agent, entered into a purchase contract for the sale of the residence to James Tharp who was represented by Skip Abrams. The selling price was \$76,800 and the closing date was to be no later than March 19, 1993.

In December 1992, Solorio prepared a purchase contract on behalf of the Hancocks for the purchase of a residence on Lake View Circle in Tucson. The purchase price was \$64,336 and the closing date was to be no later than March 19, 1993.

On or before March 19, 1993, the Hancocks notified Solorio that they needed to extend the close of escrow on the Doria residence due to a delay in the loan processing on the Lake View residence. Solorio was informed by Abrams that Tharp would not agree to an extension. Solorio informed the Hancocks that he did not feel it would be difficult to market their property to another purchaser who would agree to close at the later date, and the Hancocks and Tharp signed a mutual cancellation of the Tharp contract.

After cancellation of the Doria residence escrow, Solorio indicated that, although reluctant to do so, he might be willing to purchase the Hancocks' property for the price offered by Tharp if another purchaser could not be found. Solorio told the Hancocks to keep showing the Doria residence in the meantime.

On March 24, 1993, Solorio re-entered the Doria residence in the MLS as being back on the market with a sale price of \$79,500. Although the MLS listing indicated that Realty Power still held a valid listing agreement, the exclusive right to sell the residence had expired on March 15, 1993. In mitigation, Solorio testified that he had discussed the matter of renewing the listing with the Hancocks and, on the basis of the discussion, believed the renewal agreement to be forthcoming.

Solorio failed to renew the listing agreement and failed to obtain the required signatures from the Hancocks, although the Hancocks believed that the listing was still in effect.

On March 30, 1993, at the request of the Hancocks, Solorio, listing himself as the buyer, entered into a purchase contract with the Hancocks for the purchase of the Doria residence for \$76,850. The contract contained a disclosure that Solorio was a licensed real estate agent; that he was purchasing the property; and that he might make a profit on resale. The contract instructed Solorio to present no further offers, and Solorio was disclosed as a dual agent.

Sometime between March 29 and March 31, 1993, Sarah Petty, of La Corona de Tucson Realty, contacted Solorio regarding clients she had who were interested in viewing the Doria residence. Solorio told Petty to contact the

Hancocks directly to make an appointment to view the residence. On March 31, Petty showed the residence to her clients who made a full cash offer of \$79,500, the MLS list price.

When Petty contacted Solorio on the same day, he informed her that he had a beneficial interest in the residence and that she should submit any offers to him. Petty turned the matter over to her broker, Art Lambert, who contacted Solorio to inquire about Solorio's beneficial interest.

On April 1, 1993, Solorio reported his March 30 purchase contract between himself and the Hancocks for the purchase of the residence to the MLS. He reported the sale price as being \$79,500 although the actual purchase price in the contract was \$75,850.

Solorio, Gonzalez and Henry Santa Maria, a witness appearing on behalf of Respondents, testified that it is the common practice for Tucson brokers to report the list price of property sold to MLS rather than the actual contract price.

Shortly thereafter, the Hancocks were advised that Petty's clients had made a full-price offer, and immediately contacted Solorio regarding the new and higher offer.

A negotiation then occurred between Solorio and the Hancocks concerning Solorio's assignment to the Hancocks of the purchase contract. Gonzalez attended the meeting in an attempt to mediate the dispute. The Hancocks demanded that Solorio cancel his contract to purchase and assign to the Hancocks his rights under the contract with Petty's clients. After some discussion, the Hancocks agreed to pay Solorio \$700 in exchange for his assignment to them of the full cash offer made by Petty's clients. On April 15, 1993, escrow closed on the residence and Solorio received a commission on the sale.

Solorio would have received approximately \$1,900 more had he insisted on first closing the purchase contract with the Hancocks, and then selling his interest in the residence at the full cash price to Petty's clients.

After this matter was set for hearing, Solorio agreed to, and has returned, the \$700 received as an assignment fee, and also agreed to pay a sum equal to one-half of his commission earned in the transaction in the event that Solorio and Gonzalez were not required to go to hearing.

There has been a previous action by the Department concerning Solorio's license, the result of which was a Consent Order which imposed upon him a 30-day suspension of his license.

VIOLATIONS: Realty Power and Gonzalez are responsible for the acts of Solorio while he was in their employ, pursuant to A.A.C. R4-28-303(K) [now (H)]. Realty Power, designated broker Gonzalez and associate broker Solorio breached their individual and collective fiduciary duties to the Hancocks of loyalty, obedience and reasonable care to protect the interests of their clients above all else, in violation of A.A.C. R4-28-1101(A). This conclusion is supported as follows:

a. Having entered into a contract to purchase the Hancocks' property, Solorio became a principal in the transaction which was reviewed and ini-

tiated by Gonzalez. It is axiomatic that a real estate licensee cannot fulfill his fiduciary duties to the seller in a real estate transaction when the licensee is also representing himself as the buyer.

b. A fiduciary duty created by a real estate listing contract continues beyond the signing of a purchase contract.

Both Gonzalez and Solorio admit that they acted negligently in failing to obtain the appropriate signatures on the renewal of the listing agreement which expired on March 15, 1993, in violation of A.R.S. § 32-2153(A)(22). This negligence also resulted in a violation of A.A.C. R4-28-801(A) and (C) [now A.R.S. § 32-2151.02(A)].

The Hancocks believed that the listing was still in effect and that Realty Power was entitled to a commission on the sale. Solorio, Gonzalez and Realty Power breached their fiduciary duty to the Hancocks by failing to inform them of the ramifications in dealing with Solorio after the expiration date of the listing, in violation of A.A.C. R4-28-1101(A). This omission constitutes a substantial misrepresentation within the meaning of A.R.S. §§ 32-2153(A)(1) and (B)(3).

Having violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules, Solorio, Realty Power and Gonzalez have violated A.R.S. § 32-2153(A)(3). Realty Power and Gonzalez failed to reasonably supervise Solorio, within the meaning of A.R.S. § 32-2153(A)(21). Solorio has violated A.R.S. §§ 32-2153(A)(1), (A)(3), (A)(22), (B)(3) and A.A.C. R4-28-801(A), (C) and A.A.C. R4-28-1101(A). Realty Power and Gonzalez have violated A.R.S. §§ 32-2153(A)(3), (A)(21), (A)(22) and A.A.C. R4-28-801(A), (C), and A.A.C. R4-28-1101(A).

DISPOSITION: Realty Power, Gonzalez and Solorio shall dismiss, with prejudice, their appeal filed on March 25, 1997, in the Court of Appeals, Division One, with all parties to bear their individual attorney fees and costs. The Findings of Fact and Conclusions of Law and Order entered by the Commissioner on March 22, 1996, are hereby vacated.

Solorio's application for renewal of his real estate broker's license is approved and his license renewed, but it shall be suspended for a period of 90 days effective upon the date of this Consent Order. Prior to reinstatement of his license, Solorio shall satisfy all of the following conditions:

a. Solorio shall pay a civil penalty in the amount of \$2,000.

b. He shall take 12 hours of continuing education in topics specified by the Department in addition to continuing education required for license renewal.

Gonzalez and Realty Power's applications for renewal of their broker's licenses are approved and their licenses renewed upon satisfaction of the following conditions:

a. Realty Power and Gonzalez shall each pay a civil penalty in the amount of \$2,000.

b. Gonzalez shall take 24 hours of continuing education in topics specified by the Department in addition to continuing education required for license renewal.

#### H-1895

**In the matter of the real estate broker's licenses of Bonnie Ewell-Doll, GECC Enterprises, Inc., dba ERA-American ERA, Realtors (Gilbert), and in the matter of the real estate salesperson's license of Thomas Moser (Tempe).**

DATE OF ORDER: July 10, 1997

FINDINGS OF FACT: Moser, who was employed as a salesperson by GECC, was issued an original real estate salesperson's license in March 1991. The license expired March 31, 1997. GECC is a corporation licensed as a real estate broker.

Between April 1, 1997 and June 2, 1997, Moser provided real estate services while his license was expired. He submitted an untimely renewal application to the Department on June 10, 1997.

Ewell-Doll was appointed designated broker for GECC on December 30, 1988. As designated broker of GECC she was responsible to ensure that salespersons and associate brokers employed by GECC were currently and actively licensed to the corporation.

At the time he submitted his renewal application, Moser disclosed he anticipated receipt of \$2,387 in commissions.

Ewell-Doll stated that due to a change in personnel, the expiration of Moser's license was overlooked.

VIOLATIONS: Moser conducted activities for which a real estate license is required, in violation of A.R.S. § 32-2122. Moser received or expected to receive compensation while his license was expired, in violation of A.R.S. §§ 32-2153(A)(10) and 32-2155(A).

Ewell-Doll and GECC employed and paid or expected to pay compensation to a salesperson whose license had expired in violation of A.R.S. §§ 32-2153(A)(6), 32-2153(A)(10) and 32-2155(A) and (B).

Moser, Ewell-Doll and GECC disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3).

DISPOSITION: Moser and Ewell-Doll shall each pay a civil penalty in the amount of \$500.

Moser shall take 12 hours, and Ewell-Doll shall take six hours of real estate continuing education in topics specified by the Department in addition to continuing education required for license renewal.

GECC, Ewell-Doll and Moser shall offer to refund commissions earned while Moser's license was expired.

#### H-1898

**Anthony W. Marrs and AW Marrs, Inc. Tucson**

DATE OF ORDER: JULY 29, 1997

FINDINGS OF FACT: Marrs was issued an original real estate broker's license in January 1975. That license expired March 31, 1997. He is the designated broker of AW Marrs, Inc., a corporation licensed as a real estate broker. The corporate license also expired on March 31, 1997.

On July 8, 1997, Marrs submitted a late renewal application for his license and the corporate license. He stated that an employee had received both renewal applications and had filed them away without notifying Marrs.

Between April 1 and June 27, 1997, Marrs and AW Marrs provided real estate services for which a license was required.

In his renewal application, Marrs disclosed that AW Marrs had received \$11,541 in commissions and anticipated an additional \$16,614.11 for transactions handled during the unlicensed period.

Marrs attests that he has not and will not receive a commission from these transactions but is paid a monthly salary based on the corporation's receipts.

VIOLATIONS: Marrs and AW Marrs conducted activities for which a current real estate license was required, in violation of A.R.S. § 32-2130(B). AW Marrs received compensation while its license was expired, and while its designated broker's license was expired, in violation of A.R.S. § 32-2153(A)(10).

Marrs and AW Marrs demonstrated negligence in performing any act for which a license is required by continuing to work after license expiration, in violation of A.R.S. § 32-2153(A)(22). Marrs and AW Marrs disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3).

DISPOSITION: Marrs and AW Marrs shall pay the Department a civil penalty in the amount of \$500.

Marrs shall take six hours of continuing education in topics designated by the Department in addition to continuing education required for license renewal.

Marrs and AW Marrs shall offer to refund or not accept commissions which they earned after license expiration.

#### H-1899

**In the matter of the real estate broker's license of William G. Jilbert and DMLB, Ltd., dba Coldwell Banker-Success Realty, and in the matter of the real estate salesperson's license of Stephen R. Yannone Scottsdale**

DATE OF ORDER: August 5, 1997

FINDINGS OF FACT: Yannone was issued an original real estate salesperson's license in June 1970. The license expired April 30, 1997. He is employed as a salesperson by Coldwell Banker-Success Realty, a corporation licensed as a real estate broker.

After his license expired, Yannone continued to provide real estate services until he submitted a late renewal application to the Department on June 19, 1997.

Jilbert was appointed designated broker for Success on December 21, 1994, and as designated broker of Success was responsible to ensure that salespersons and associate brokers employed by Success were currently and actively licensed to the corporation.

At the time he submitted his renewal application, Yannone disclosed he wrote one purchase contract and executed one listing agreement. He also, while unlicensed, provided Broker Price Opinions on nine properties which were approaching foreclosure, for which he was paid \$50 each.

VIOLATIONS: Yannone engaged in activities for which a real estate license is required while not licensed to do so in violation of A.R.S. § 32-

2153(B)(6). He received compensation while his license was expired, in violation of A.R.S. §§ 32-2153(A)(10) and 32-2155(A).

He failed to pay the Commissioner the biennial renewal fee promptly and before the time specified, in violation of A.R.S. § 32-2153(A)(14).

Success, by and through Jilbert, employed and paid compensation to a salesperson whose license had expired, in violation of A.R.S. §§ 32-2153(A)(6), 32-2153(A)(10) and 32-2155(A).

Jilbert, as designated broker for Success, failed to exercise reasonable supervision over the activities of Yannone in violation of A.R.S. § 32-2153(A)(21).

Yannone and Jilbert demonstrated negligence in performing an act for which a license is required, in violation of A.R.S. § 32-2153(A)(22). Yannone disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3).

Success, by and through Yannone, engaged in activities for which a real estate license is required in violation of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2122(B).

DISPOSITION: Yannone individually, and Jilbert and Success collectively, shall each pay a civil penalty in the amount of \$500. Yannone and Jilbert shall each take six hours of continuing education in topics specified by the Department in addition to continuing education required for license renewal.

Success, Jilbert and Yannone shall offer to refund commissions and/or compensation earned by Yannone while his license was expired.

#### H-1900

**In the matter of the subdivision law violations of RDC Homes, L.L.C. and Robert P. Baker, and in the matter of the real estate broker's license of Robert P. Baker.**

#### Scottsdale

DATE OF ORDER: August 22, 1997

FINDINGS OF FACT: Baker is currently a self-employed real estate broker. His license expires January 31, 1998. RDC Homes is an Arizona limited liability company located in Maricopa County authorized to transact business in Arizona. Baker is listed as Member/Manager of RDC. Blackhawk Land Group, located in Maricopa County, is a limited liability company authorized to do business in Arizona. W.C. Baker, the father of Robert Baker, is listed as Member/Manager of Blackhawk.

Mountain View Estates Units 1, 2 and 3 constitute subdivisions within the meaning of A.R.S. § 32-2101, et seq., and are located in Pinal County.

On April 25, 1995, the Department issued Blackhawk a public report for the sale of unimproved lots in Mountain View Estates Unit 1. On May 11, 1995, the Department issued Blackhawk a public report for the sale of unimproved lots in Mountain View Estates Units 2 and 3. These public reports did not allow the sale of improved lots.

In July 1995, RDC entered into an option to purchase agreement with Blackhawk for the

purchase of lots and/or parcels in Mountain View Estates. In November 1995, RDC and Blackhawk amended the purchase option by entering into an amended purchase option giving RDC the option to purchase six or more lots and/or parcels within Mountain View Estates.

From November 9, 1995 to March 22, 1996, RDC, through Baker, offered for sale all of the lots and sold fewer than six, in Mountain View Estates Unit 1 which were owned by Blackhawk and which RDC had an option to purchase, without giving written notice to or obtaining prior approval from the Commissioner.

On March 14, 1996, RDC entered into a purchase contract agreement with a buyer for the sale of an improved lot in Mountain View Estates Unit 1.

On March 22, 1996, Blackhawk and RDC voluntarily suspended sales and Blackhawk withdrew its public report.

RDC and Baker did not obtain a public report separate from the public report issued to Blackhawk prior to offering the subdivided lands for sale or lease. RDC did not obtain a Subsequent Owner Exemption pursuant to A.R.S. § 32-2181(B).

The Department requested copies of RDC's records relating to the sale or lease of Mountain View Estates. Baker failed to disclose records relating to the sale of four lots to Mammoth Investments, Inc. When the Department questioned Baker about the records, he said he did not have a copy of the purchase agreement contract relating to the sale of lots to Mammoth Investments in his possession.

The Commissioner has not exempted Mountain View Estates Units 1, 2 and 3 from the provisions of A.R.S. § 32-2181 as permitted pursuant to A.R.S. §§ 32-2181.01 and 32-2181.02.

On December 18, 1996, the Commissioner issued an amended public report to Blackhawk approving the sale or lease of improved or unimproved lots, parcels or fractional interests in Mountain View Estates Unit 1. On April 2, 1997, the Department granted RDC a Subsequent Owner Exemption for the sale or lease of lots, parcels or fractional interests in Mountain View Estates Unit 1.

VIOLATIONS: By failing to keep records of all transactions as required by A.R.S. § 32-2151.01(A), Baker failed to maintain a complete record of each transaction that comes within the provisions of Arizona Revised Statutes, Title 32, Chapter 20, in violation of A.R.S. § 32-2153(A)(18).

RDC and Baker demonstrated negligence within the meaning of A.R.S. § 32-2153(A)(22) by failing to maintain complete records and by failing to obtain prior approval from the Commissioner prior to offering Mountain View Estates lots for sale.

By engaging in the sale of lands as referenced above, RDC and Baker have sold lots without giving prior written notice to or obtaining prior approval from the Commissioner, in violation of A.R.S. § 32-2181(A).

RDC and Baker failed to obtain a public report from the Commissioner prior to offering lots for sale or lease, in violation of A.R.S. § 32-2183(E).

DISPOSITION: RDC and Baker shall offer rescission to all persons who purchased lots from RDC in the Mountain View Estates Units 1, 2 or 3 before April 2, 1997. RDC and Baker are assessed, collectively, a civil penalty in the amount of \$5,000.

#### H-1716

**Larry R. McGowen**

#### Glendale

DATE OF ORDER: August 18, 1997

FINDINGS OF FACT: On July 19, 1995, the Commissioner entered into a Consent Order with McGowen in which McGowen was issued a two-year provisional cemetery license and a real estate salesperson's license.

The Order stipulated that:

a. McGowen provide a copy of the Order to each designated broker who employed him as a real estate salesperson and/or cemetery salesperson during the two-year period.

b. A statement from each designated broker who employed McGowen acknowledging review of a copy of the Order and agreeing to serve as McGowen's Practice Monitor along with its attendant responsibilities.

c. McGowen would be and remain a law-abiding citizen and comply with the provisions of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules.

From July 21, 1995 through May 30, 1997, McGowen was employed as a real estate salesperson by American Executives Realty and Investments, Inc. Since February 20, 1997, McGowen has been employed as a cemetery salesperson by SCI Arizona Funeral Services, Inc. That license expired June 30, 1997.

On June 26, 1997, McGowen filed a timely application for renewal of his cemetery salesperson's license wherein he disclosed an October 30, 1996 misdemeanor DUI conviction.

As a result of the conviction his driver's license was suspended for 30 days and restricted for 60 days. He was fined \$400 and ordered to attend and complete an alcohol treatment program. McGowen attests to having completed the terms as ordered by the Court.

VIOLATIONS: McGowen failed to disclose the October 30, 1996 DUI conviction to the Commissioner as required by A.A.C. R4-28-301(C)(1). As a result of his conduct, McGowen disregarded or violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules pursuant to A.R.S. § 32-2153(A)(3).

As a result of his conduct, McGowen violated the terms and conditions of the Commissioner's Order, pursuant to A.R.S. § 32-2153(A)(26) [now (A)(24)]. His actions have shown he is not a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7).

DISPOSITION: McGowen's real estate salesperson's license is revoked. McGowen's application for renewal of his cemetery salesperson's license is approved and his license renewed upon entry of this Consent Order.

McGowen shall take 12 hours of continuing education in topics specified by the Department.

# Department describes duties, accomplishments to Gov. Hull

One of the first things Gov. Jane Dee Hull did after taking office was to ask each State agency to describe to her its responsibilities and recent accomplishments.

The following is an excerpt from the response from the Arizona Department of Real Estate:

## Key Programs

The primary function of the Department of Real Estate is to license, regulate and discipline approximately 50,000 real estate, cemetery and membership campground salespersons and brokers; and developers of time-shares, subdivisions, unsubdivided lands, cemeteries and membership campgrounds.

We process approximately 1,000 development applications per year, authorizing sales through the issuance of a public report. Authorization to sell is required for six or more lots in subdivisions and unsubdivided lands; 12 or more time-share intervals; membership camping contracts and cemetery plots.

We maintain the Real Estate Recovery Fund. When citizens have been determined by a court to have suffered monetary damage by acts of licensees, and licensees are subsequently determined to have insufficient assets to pay the judgment, citizens may apply to the Recovery Fund for payment of the judgment, to a maximum of \$20,000 per transaction and \$40,000 per licensee. As of June 30, 1997, the balance in the Recovery Fund was \$1.4 million.

The Department's Customer Services Division responds to 80,000 telephone calls each year to answer real-estate related questions.

We regulate approximately 110 real estate schools and the 7,000 prelicensure and continuing education courses taught by those schools.

## Performance and Productivity

Since January 1997, we have reduced the time required to examine an appli-

cation for a public report from 13 weeks to three weeks.

We have installed an up-to-date computer system serving the entire Department and, through our own expertise, have saved \$750,000 in acquisition costs and will save \$40,000 annually in service contracts.

Since January 1996 we have reduced the existing case load in the Auditing and Investigations Division from 650 to 120 active cases.

The processing time for license changes and renewals has been reduced from six weeks to three days.

## Comparison With Other States

In an international competition sponsored by the Association of Real Estate License Law Officials (ARELLO), the Department's Arizona Real Estate Bulletin was judged the best real estate regulatory agency newsletter for 1997.

Our prelicensure education program is so effective that we have the highest percentage of license candidates in the Western states who pass the national section of the real estate examination.

We are one of five states certified with HUD which means that, because of our through public report program, HUD accepts our process instead of requiring certain subdividers to obtain a HUD report.

The time required to obtain a real estate license in Arizona, from completion of prelicensure education to being issued a license, is five days compared to five months in California.

## Innovation

We are on the cutting edge of computer technology with our web site. We continuously get compliments on our site and are planning to make available, through the site, the names, business address and telephone number, and license expiration date of all active licensees.

## How to contact ADRE by phone, fax and modem

### PHOENIX OFFICE

(602) 468-1414

Fax Numbers

Administration

(602) 468-0562

Education and Licensing

(602) 955-6284

Subdivisions

(602) 955-9361

Customer Services—Extension 100

Public Information Officer—Extension 168

### TUCSON OFFICE

(520) 628-6940

fax (520) 628-6941

### FAX RESPONSE SERVICE

(602) 468-1414, Extension 3

### WORLD WIDE WEB

[www.adre.org](http://www.adre.org)

### E-MAIL

[cdowns@adre.org](mailto:cdowns@adre.org)

## ADRE web site

*Continued from page 2*

lar pages on the site, after the Table of Contents, are the summaries of Administrative Actions published in the Arizona Real Estate Bulletin. Among publications available on our web site, the Bulletin is by far the most popular.

The Department has more than 300 pages posted on its site. Topics include a description of the Department's responsibilities, the location of our offices, publications—including forms, the Bulletin and Substantive Policy Statements, information about obtaining a license, a list of approved schools offering prelicensure and continuing education courses, information about filing a complaint against a real estate licensee, and links to other web pages of interest to licensees and the public. We invite you to visit the site at [www.adre.org](http://www.adre.org).

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